

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13257

Docket No. 13014

98-2-95-2-38

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(International Association of Machinists and
(Aerospace Workers, AFL-CIO**
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)

STATEMENT OF CLAIM:

"DISPUTE: CLAIM OF EMPLOYEES

That the Missouri Pacific Railroad Company (hereinafter referred to as Carrier) violated Rule 32 of the Current Controlling Agreement between the International Association of Machinists and the Missouri Pacific Railroad Company dated June 1, 1960, as subsequently revised and amended when it harshly and unjustly placed a letter of discipline dated May 17, 1994, on the personal record of Machinist T. J. Polson (hereinafter referred to as Claimant) account his alleged failure to communicate with his foreman concerning work that had not been completed and alleged failure to sign off work reports of completed work, without first holding a formal investigation to determine the facts."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Rule 32, Investigations, concerns procedures required prior to an employee being "disciplined or dismissed."

On May 17, 1994, a Manager met with the Claimant to discuss certain work performance obligations. Following this meeting, the Manager provided the Claimant with a letter. This was a preprinted form letter with specific insertions as shown by underlining in the following:

"This will confirm my discussion with you on 5-17 1994 at 10:00 AM, at the Ramo Phase II 2nd floor concerning your responsibility to sign off work order baskets. In this regard you have been advised that you must ensure that you communicate with your Foreman what work has not been done and that you sign off work packet on work that has been accomplished.

If you fail to meet the above expectations, it may result in a Manager's conference or formal investigation. I know you can meet these expectations, and I am here to help you succeed.

Any questions concerning these expectations, please contact my at your convenience."

This letter is not disciplinary in nature. It records (and places in the Claimant's file) a Manager's attempt to improve an employee's performance through guidance and offer of assistance. As such, it is not governed by Rule 32. This conclusion has already been established on this property (and others). Second Division Awards 12718, 12720 and 12767 involved the same parties as herein and, in fact, concerned the same "fill in the blanks" form letter. The claim here under review was initiated prior to issuance of these Awards and thus could not be guided by the Awards' findings. To set this matter to rest prospectively, the Board fully endorses the reasoning in the three cited Awards, as follows:

"In view of the letter as written, this Board finds no violation of the Agreement Rule 32. Unlike the Awards cited by the Organization, supra, there is no statement alleging that the Claimant violated any specified Rule of the Agreement. There is no unequivocal statement that the Carrier has found the Claimant to have committed a violation. The Board does not find the letter to be either accusatory or conclusionary as failing to properly fulfill responsibilities. The Board concludes that the letter is properly a conference letter and does not rise to the level of constituting disciplinary action. Its placement with the Claimant's personnel file does not violate Rule 32."

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 18th day of May 1998.